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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/923,621 | 08/07/2001 | Karlheinz Hausmann | AD6745 US NA | 2090 |

23906 7590 11/30/2004

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WILMINGTON, DE 19805

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,621

Applicant(s)

HAUSMANN ET AL.

Examiner

Walter B Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Acknowledgement of Applicant's Amendments

1. The amendments made in claims 1 and 3-5 in the Amendment filed September 9, 2004 (Amdt. D) have been received and considered by Examiner.
2. New claim 13 presented in Amdt. D has been received and considered by Examiner.
3. The amendment in the specification in Amdt. D has been received and considered by Examiner.

Election/Restrictions

4. The restriction requirement is proper for the reasons provided in Paper 7, Paper 12 and paragraph 4 of the previous Office Action dated April 9, 2004. The restriction requirement was made FINAL in Paper 12.

WITHDRAWN OBJECTIONS

5. The objection to claims 4 and 5 made of record in paragraph 11 of the previous Office Action dated April 9, 2004 has been withdrawn due to Applicant's amendments in claims 4 and 5 in Amdt. D.

WITHDRAWN REJECTIONS

6. The 35 U.S.C. 112 rejection of claims 4 and 5 made of record in paragraph 12 of the previous Office Action dated April 9, 2004 has been withdrawn due to Applicant's amendments in Amdt. D.

NEW REJECTIONS

7. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Hekal for the reasons previously made of record in regard to the rejection of claim 1 in paragraph 6 of the previous

Office Action dated April 9, 2004. The subject matter of new claim 13 was removed from claim 1.

REPEATED REJECTIONS

8. The 35 U.S.C. 112 rejection of claim 1 made of record in paragraph 12 of the previous Office Action dated April 9, 2004 has been repeated for the reasons previously made of record in regard to the "the multilayer polymer film" recitation. All other reasons for rejection of claim 1 made of record in paragraph 12 of the previous Office Action dated April 9, 2004 have been withdrawn due to Applicant's amendments in Amdt. D.
9. The 35 U.S.C. 102 rejection of claims 1 and 4 that was repeated in paragraph 6 of the previous Office Action dated April 9, 2004 has been repeated for the reasons previously made of record. The last three lines of claim 1 have been moved to claim 1 from claim 4.
10. The 35 U.S.C. 103 rejection of claims 2, 4 and 6 that was repeated in paragraph 7 of the previous Office Action dated April 9, 2004 has been repeated for the reasons previously made of record.
11. The 35 U.S.C. 103 rejection of claims 3 and 5 that was repeated in paragraph 8 of the previous Office Action dated April 9, 2004 has been repeated for the reasons previously made of record, taking in account the new rejection of claim 13 made of record in this Office Action (claims 3 and 5 now depend upon claim 13).
12. The 35 U.S.C. 103 rejection of claims 3, 5 and 7 that was repeated in paragraph 9 of the previous Office Action dated April 9, 2004 has been repeated for the reasons previously made of record, taking in account the new rejection of claim 13 made of record in this Office Action (claims 3, 5 and 7 now depend upon claim 13).

13. The 35 U.S.C. 103 rejection of claim 8 that was repeated in paragraph 10 of the previous Office Action dated April 9, 2004 has been repeated for the reasons previously made of record.

ANSWER TO APPLICANT'S ARGUMENTS

14. Applicant's arguments regarding the 35 U.S.C. 102 rejection of claims 1 and 4 presented on pages 7-9 of Amdt. D have been fully considered but are not persuasive. In the sentence bridging pages 7-8 of Amdt. D, Applicant points out that Hekal teaches that the package of Hekal is for use in "bags containing fish and animal waste" int. al. Fresh fish plainly falls within the scope of this phrase. Fish are animals: the phrase "bags containing animal waste" would have sufficed if Hekal intended to refer only to waste (and not a certain fresh food, i.e. fish). Applicant does not mention that Hekal teaches that the odor absorber of Hekal "can be applied conveniently in fish wrapping or in a covering for animal waste" as the previous Office Actions have pointed out. This teaching elaborates on the "bags containing fish and animal waste" phrase and supports the Office's position that fresh fish is not excluded from the phrase "bags containing fish and animal waste". Regardless, fresh fish is included within the scope of the phrase "can be applied conveniently in fish wrapping or in a covering for animal waste". Applicant has not addressed this teaching in Applicant's arguments.

15. In regard to Applicant's arguments in the second full paragraph of page 9 of Amdt. D, fresh fish plainly falls within the scope of the phrase "bags containing fish and animal waste" for the reasons discussed above, and Applicant has not addressed the teaching of Hekal that the odor absorber "can be applied conveniently in fish wrapping or in a covering for animal waste" that indisputably contains fresh fish within its scope.

16. In regard to Applicant's arguments in the third full paragraph of page 9 of Amdt. D, Applicant argues that Hekal is "clearly unaware that incorporating known odor-absorbing zeolites can actually reduce the odor-absorbing capacity of certain polymeric films", but Hekal teaches the structure and composition claimed by Applicant in claim 1; therefore, the package of Hekal necessarily performs the function that is claimed in claim 1.

17. Applicant's arguments regarding the applicability of Yoshikawa and Kennedy references on pages 9-11 of Amdt. D have been fully considered but are not persuasive. Applicant's argument that neither Yoshikawa nor Kennedy teach or suggest to "tailor the adsorption capacity of the packaging material described therein" is irrelevant because Hekal teaches the structure and composition claimed by Applicant in claim 1; therefore, the package of Hekal necessarily performs the function that is claimed in claim 1, and the package taught by the combination of Hekal and Yoshikawa and/or Kennedy consequently necessarily performs the function that is claimed in claim 1.

18. Applicant's arguments regarding the rejection of claim 8 over Hekal in view of Andersson on pages 11-12 of Amdt. D have been fully considered but are not persuasive. Applicant's argument that Andersson does not teach or suggest to "absorb undesirable aromas" or to "tailor the adsorption capacity of the packaging material described therein" is irrelevant because Hekal teaches the structure and composition claimed by Applicant in claim 1; therefore, the package of Hekal necessarily performs the function that is claimed in claim 1, and the package taught by the combination of Hekal and Andersson consequently necessarily performs the function that is claimed in claim 1. Applicant also argues that "Modifying the packaging of Andersson with the odor-absorbing material of Hekal would result in the absorption of

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[aromatic] materials”, but the rejection does not propose modifying the packaging of Andersson: the rejection proposes modifying the package of Hekal (see paragraph 19 of Paper 12).

Andersson is relied upon solely for a teaching that it is known to modify the headspace of a food package with an aroma. The goal of Hekal is not to avoid exposure to all aromatic compounds but to avoid exposure to “odor-causing compounds such as amines” (page 3, lines 3-4).

Andersson’s goal is to expose the consumer to pleasing aromas (see, e.g., col. 1, lines 6-16), not to expose the consumer to the “odor-causing compounds such as amines” that Hekal aims to absorb; therefore, the aims of Hekal and Andersson do not conflict, and Hekal and Andersson have been properly combined.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

11/22/04

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/24/04